

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KEVIN YAN LUIS, *on behalf of himself
and all others similarly situated,*

Plaintiff,

-v.-

AMMANII, LLC,

Defendant.

23 Civ. 7540 (KPF)

ORDER

KATHERINE POLK FAILLA, District Judge:

Plaintiff's initial complaint in this matter was filed on August 24, 2023. (Dkt. #1). An electronic summons was issued as to Defendant Ammanii on August 25, 2023. (Dkt. #4). To date, however, Plaintiff has failed to effectuate service on Defendant. By Order issued November 14, 2023, the Court extended Plaintiff's deadline to serve Defendant to December 6, 2023, in light of Plaintiff's representation that he intended to promptly attempt service via the Secretary of State. (Dkt. #7). The Court further ordered that, should Plaintiff fail to serve Defendant, "he shall provide the Court with good cause in writing, on or before December 13, 2023, for why this case should not be dismissed pursuant to Federal Rule of Civil Procedure 4(m)." (*Id.*).

Rule 4(m), in turn, provides that "[i]f a defendant is not served within 90 days after the complaint is filed, the court — on motion or on its own after notice to the plaintiff — must dismiss the action without prejudice against that defendant or order that service be made within a specified time." Fed. R. Civ. P. 4(m). It has been over two weeks since the extended deadline to effect

service in this matter, and over a week since Plaintiff was ordered to provide the court with good cause for why this case should not be dismissed pursuant to Rule 4(m).

Dismissal without prejudice is therefore appropriate under the circumstances. *See, e.g., Dicks v. Chow*, 382 F. App'x 28, 30 (2d Cir. 2010) (summary order) (affirming *sua sponte* dismissal of [] complaint under Rule 4(m) after notice). Despite being afforded an extension of the deadline to serve Defendant, and being clearly notified of the consequences for failing to do so, Plaintiff has neither served Defendant, nor provided good cause for why he has not done so, and for why this case should not be dismissed in light of such inaction.

CONCLUSION

For the foregoing reasons, this action is dismissed without prejudice for Plaintiff's failure to effect timely service. The Clerk of Court is directed to terminate all pending motions, adjourn all remaining dates, and close this case.

SO ORDERED.

Dated: December 21, 2023
New York, New York



KATHERINE POLK FAILLA
United States District Judge